IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16836 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAFIMAHAMMED GULAM HUSSAIN VORA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16836 of 2003

MS SHAMEEN QURESHI FOR

MR MM TIRMIZI for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

GOVERNMENT PLEADER for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 22/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 18/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three I.P.C. offences were registered against him before Kheda Town, Libasi and Matar Police Station at C.R.No.48/2002, 65/2002 and 185/2003 on 13/10/02, 19/10/02 and 15/09/03 respectively. It was also alleged that three witnesses had given statements against the petitioner.

3. On the strength of the aforesaid three registered offences and three statements of unnamed witnesses, the detaining authority found the petitioner to be a "dangerous person", and accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that the petitioner had submitted a representation dated 22/11/03 to the detaining authority i.e. the District Magistrate and that it was received by the said authority on the same day. That instead of considering the representation, the District Magistrate forwarded the same to the Home Department, Govt. of Gujarat. The learned advocate for the petitioner produces on record a communication received from the District Magistrate dated 25/11/03. It is taken on record. On going through the said communication, it can be gathered that the said representation was received by the said authority on 24/11/03 and it was forwarded to the State Government.

5. It is not much in dispute that the order of detention was approved by the State Government on 27/11/03. This would show that the date on which the representation was received by the office of the detaining authority and the date on which it was forwarded to the State Government, the detention was not approved. The detaining authority was within its power to consider the said representation. But, instead of considering the said representation, the said authority forwarded the same to the State Government.

6. It is also required to be considered that at the bottom of the ground of detention, the detaining authority has made it clear that it was open to the

petitioner to submit representation to the detaining authority or to the Government or to the Advisory Board. When the petitioner has exercised his option of submitting representation to the detaining authority, the said authority did not consider the same and instead forwarded it to the State Government. This means that the representation of the petitioner was not considered by the detaining authority, though it was competent to do so. Therefore, when the valuable right of the petitioner has been denied, the further continuance of the detention of the petitioner cannot be sustained in the eye of law. It would, therefore, not be necessary to go into other contentions raised by the petitioner in the petition.

7. For the foregoing reason, this petition is allowed. The impugned order of detention dated 18/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Shafimahammed Gulam Hussain Vora, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

pravin/